

## HKEX LISTING DECISION

HKEX-LD130-2021 (published in July 2021) (Withdrawn in January 2024)

[Streamlined and incorporated into the guidance letter GL104-19 (Guidance on application of the reverse takeover Rules).]

<b>Parties</b>	Company A – a Main Board issuer  Company B – the controlling shareholder of Company A  Target Company – a company owned by Company B
<b>Issue</b>	Whether Company A's proposed acquisition of the Target Company constituted a reverse takeover
<b>Listing Rules</b>	Main Board Rules 14.06B and 14.06C
<b>Decision</b>	The proposed acquisition constituted an extreme transaction.

### FACTS

1. Company A was principally engaged in leasing of properties, production and sale of education-related equipment and money lending. The leasing and education-related equipment businesses contributed over 95% of Company A's revenue in recent years.
2. Company B had been the controlling shareholder of Company A for more than three years.

#### *Proposed Acquisition*

3. Company A proposed to acquire the Target Company from Company B (the **Proposed Acquisition**). It would settle the consideration with cash and by issuing convertible bonds. The Proposed Acquisition would not result in a change in control of Company A.
4. The Target Company provided financial leasing and factoring services in the PRC. It was substantially larger than Company A, with percentage ratios between 10 and 35 times.

### APPLICABLE LISTING RULES

5. Rule 14.06B defines a "reverse takeover" as "*an acquisition or a series of acquisitions of assets by a listed issuer which, in the opinion of the Exchange, constitutes, or is part of a transaction and/or arrangement or series of transactions and/or arrangements which constitute, an attempt to achieve a listing of the acquisition targets (as defined in rule 14.04(2A)) and a means to circumvent the requirements for new applicants set out in Chapter 8 of the Listing Rules.*" This is a principle based test.
6. Note 1 to Rule 14.06B sets out the factors that the Exchange will normally consider in assessing whether the acquisition or series of acquisitions is a RTO transaction under the principle based test.

7. Rule 14.06C defines an “extreme transaction” as “*an acquisition or a series of acquisitions of assets by a listed issuer, which individually or together with other transactions or arrangements, may, by reference to the factors set out in Note 1 to rule 14.06B, have the effect of achieving a listing of the acquisition targets, but where the issuer can demonstrate that it is not an attempt to circumvent the requirements for new applicants set out in Chapter 8 of the Listing Rules and that:*
- (1) (a) *the issuer (other than at the level of its subsidiaries) has been under the control or de facto control (by reference to the factors set out in Note 1(e) to rule 14.06B) of a person or group of persons for a long period (normally not less than 36 months), and the transaction would not result in a change in control or de facto control of the issuer; or*
  - (b) *the issuer has been operating a principal business of a substantial size, which will continue after the transaction; and*
  - (2) *the acquisition targets meet the requirements of rule 8.04 and rule 8.05 (or rule 8.05A or 8.05B) and the enlarged group meets all the new listing requirements set out in Chapter 8 of the Listing Rules (except rule 8.05).”*
8. The Exchange Guidance Letter ([HKEX-GL104-19](#)) on RTO explains that the RTO rules are principle based, anti-avoidance provisions designed to prevent the circumvention of new listing requirements for the assets acquired and/or to be acquired. Paragraph 47 of the guidance letter states that “*The Listing Committee may, in principle, allow the issuer to classify its proposed acquisition as an extreme transaction based on the information provided in its written submission and/or draft circular and any additional information requested by the Department. However, this classification is subject to the completion of the financial adviser’s due diligence work on the target business and its submission of a declaration to support that the acquisition target can meet Rule 8.04 and Rule 8.05...*”

## **ANALYSIS**

9. In assessing the principle based test of Rule 14.06B, the Exchange will consider the six assessment factors and whether taken together, an acquisition would be considered an attempt to circumvent the new listing requirements and a means to achieve the listing of the acquisition targets. Where an acquisition has the effect of achieving a listing of the acquisition targets under the principle based test, but the issuer can demonstrate that the acquisition is not an attempt to circumvent the new listing requirement, the “extreme transaction” category may apply if the issuer can satisfy one of the eligibility criteria set out in Rule 14.06C(1).
10. In this case, the Exchange considered that the Proposed Acquisition would have the effect of achieving a listing of the Target Company’s business because:
- (a) The size of Proposed Acquisition was extreme compared to Company A’s existing businesses (with the percentage ratios of 10 times or more). The existing businesses would become immaterial after the acquisition;
  - (b) The Target Company’s business was different from Company A’s core businesses in property leasing and production and sale of education-related equipment. Given the significant size of the Proposed Acquisition, the Proposed Acquisition would result in a fundamental change in Company A’s principal business; and

- (c) Company A argued that the Proposed Acquisition was not an extreme case as it represented an expansion of Company A's existing money lending business. However, the Exchange noted that the money lending business was small in scale. Further, the Target Company's business was substantially different from Company A's money lending business in terms of operating scale, business models and customer base. Company A would be substantially carrying on the Target Company's business after the Proposed Acquisition.
11. Nevertheless, the Exchange agreed that the Proposed Acquisition could be classified as an extreme transaction (and not a RTO) under Rule 14.06C having regard to the following:
- (a) Company A had demonstrated that the Target Company could meet the new listing track record requirements (Rule 8.05(1)) and the suitability for listing requirement (Rule 8.04) (subject to the completion of the financial adviser's due diligence work on the Target Company). The Proposed Acquisition was not an attempt to circumvent the new listing requirements; and
  - (b) Company A met the eligibility criterion set out in Rule 14.06C(1)(a) as it had been under control of Company B for more than 36 months and the Proposed Acquisition would not result in a change in control of Company A.

## **CONCLUSION**

12. The Proposed Acquisition was classified as an extreme transaction under Rule 14.06C.